

1 **UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF NEW YORK**

3 KALAMATA CAPITAL GROUP, LLC,

Case No. 24 Civ. 4875

4
5 Plaintiff,

6 v.

**DEFENDANT VARALUZ LLC'S NOTICE
OF REMOVAL TO THE UNITED STATES
BANKRUPTCY COURT**

7 VARALUZ LLC D/B/A VARALUZ CASA;
8 LAFORGE DESIGN CORP; VARALUZ, LLC;
9 VARALUZLLC; VARALUZ LIGHTING;
10 VARALUZ and RONALD FRANKLIN
11 HENDERSON,

[Index No. 036634/2023

Supreme Court of the State of New York, County
of Rockland]

12 Defendants.

13 **TO: THE HONORABLE UNITED STATES DISTRICT COURT JUDGE, ALL**
14 **PARTIES IN THE ABOVE-CAPTIONED STATE COURT CIVIL ACTION**
15 **HEREBY REMOVED, THE CLERK OF THE SUPREME COURT OF THE**
16 **STATE OF NEW YORK (COUNTY OF ROCKLAND), AND THE CLERK OF THE**
17 **UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF**
18 **NEW YORK:**

19 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1452(a) and 1334(b), Rule 9027
20 of the Federal Rules of Bankruptcy Procedure, Defendant Varaluz, LLC ("Debtor"), by and
21 through its counsel, David Kasell, hereby gives notice of removal of the action *Kalamata Capital*
22 *Group, LLC v. Varaluz LLC, et al.*, Index No. 03663/2023(the "State Court Action"), from the
23 Supreme Court of the State of New York, County of Rockland ("State Court"), where it is now
24 pending, to the United States District Court for the Southern District of New York. The Complaint
25 in the State Court is attached hereto as **Exhibit A** (the "Complaint").

26 Upon removal of the claims in the State Action, Debtor consents to the entry of final orders
27 or judgment by this Bankruptcy Court.

28 As grounds for removal, Debtor states as follows:

1. On January 22, 2024, Plaintiff Kalamata Capital Group, LLC ("Plaintiff") filed the
Complaint.

1 2. On June 25, 2024 (“Petition Date”), Debtor filed its voluntary petition for relief
2 under Chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned bankruptcy
3 case (the “Chapter 11 Case”). *See* ECF No. 1.

4 3. In the State Court Action, Plaintiff seeks a judgment against the Debtor and others
5 based on monies purportedly due and owing by the Debtor.

6 4. The State Court Action, including all claims and causes of action asserted therein, is a
7 civil action other than a proceeding before the United States Tax Court or a civil action by a
8 governmental unit to enforce such governmental unit’s police or regulatory power; therefore, the
9 State Court Action may be removed to the Bankruptcy Court pursuant to 28 U.S.C. §§ 1452(a),
10 1334, and 157.

11 5. Pursuant to 28 U.S.C. § 157(b), this Court has jurisdiction over “all cases under title 11
12 and all core proceedings arising under title 11, or arising in a case under title 11, referred under
13 subsection (a) of this section.” This Court has jurisdiction over the State Court Action as it is a
14 “core proceeding” by virtue of 28 U.S.C. § 157(b)(2)(A) and (O) because the State Court Action
15 relates to matters concerning the administration of the bankruptcy estate and other proceedings
16 affecting the liquidation of the assets of the estate or the adjustment of the debtor creditor or the
17 equity-security holder relationship. The resolution of the State Court Action in the Bankruptcy
18 Court, therefore, is necessary and will avoid inconsistent rulings that may affect administration of
19 bankruptcy estate.

20 6. Civil actions that are “related to” a case under title 11 may also be removed from the
21 state court to federal district court by one of the parties to the litigation pursuant to § 1452(a). To
22 the extent that the Court determines that the State Court Action is not a “core proceeding,” the
23 Court would still have jurisdiction to hear the State Court Action under 28 U.S.C. § 157(c)(1)
24 because it is otherwise related to a case under the Bankruptcy Code.

25 7. This Notice is timely pursuant to the requirements of Fed. R. Bankr. P. 9027(a)(2) as
26 this Notice is being filed within 90 days of the order for relief in bankruptcy. 28 U.S.C. § 1452(a)
27 permits removal of “any claim or cause of action in a civil action...to the district court for the
28 district where such civil action is pending, if [the] district court has jurisdiction of such claim or

1 cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a). Under 28 U.S.C. § 1334(b),
 2 district courts have original (but not exclusive) jurisdiction over “all civil proceedings arising
 3 under title 11, or arising in or related to cases under title 11.” *Id.* § 1334(b).¹

4 8. This Notice of Removal is accompanied by a copy of all “process and pleadings” in
 5 accordance with Bankruptcy Rule 9027(a) and 28 U.S.C. § 1446 as follows:

6 ■ Summons and Complaint, **Exhibit A**

7 **NOW, THEREFORE**, all parties to the State Court Action are hereby notified as follows:

8 (a) Pursuant to this Notice of Removal, the State Court Action has been removed from
 9 State Court to the District Court for referral to the Bankruptcy Court.

10 (b) Removal of the State Court Action and all claims and causes of action therein was
 11 affected upon the filing of a copy of this Notice of Removal with the Clerk of the State Court
 12 pursuant to Bankruptcy Rule 9027(c). The parties to the State Court Action shall proceed no
 13 further in the State Court unless and until the action is remanded by the Bankruptcy Court.

14 (c) Any party who has filed a pleading in connection with the removed claim or cause
 15 of action, other than the party filing this Notice of Removal, shall file a statement admitting or
 16 denying any allegation in the Notice of Removal. If the statement alleges that the proceeding is
 17 non-core, it shall state that the party does or does not consent to the entry of final orders or
 18 judgments by the Bankruptcy Judge. A statement required by this paragraph shall be signed
 19 pursuant to Bankruptcy Rule 9011 and shall be filed not later than 14-days after the filing of this
 20 Notice of Removal.

21 Promptly after filing this Notice of Removal, Debtor will file a copy of it with the clerk of
 22 the State Court in which this action is pending and will give written notice to the Plaintiff, as
 23 required by 28 U.S.C. § 1446(d).

24 Nothing in this Notice is intended or should be construed as any type of express or implied
 25 admission by Debtor of any fact, of any validity or merits of any of Plaintiff’s claims, causes of
 26 action, theory of damages, and allegations, or of any liability for the same, all of which are hereby

27 _____
 28 ¹ Once an action is removed to the district court, it is automatically referred to the bankruptcy court pursuant to the standing orders promulgated under 28 U.S.C. § 157(a).

1 expressly denied, or as any type of express or implied waiver or limitation of any of Debtor's
2 rights, claims, remedies, and defenses in connection with this action, all of which are hereby fully
3 and expressly reserved. Debtor expressly reserves the right to amend or supplement this Notice of
4 Removal, should any aspect of this removal and/or the information set forth herein be challenged.

5 This Notice of Removal is executed and filed pursuant to Fed. R. Civ. P. 11.

6 Dated this 27th day of June 2024.

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8 By: /s/David Kasell
9 Kasell Law Firm
10 1038 Jackson Avenue, Suite #4
11 Long Island City, New York 11101
12 *Attorneys for Varaluz, LLC*
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